SOME POLITICAL ASPECTS OF HOMESTEAD LEGISLATION

THE policy of disposing of the public lands of the United States under the principles of the homestead law, first adopted in 1862, was the outgrowth of a long period of discussion and experiment in which nearly all possible plans for the administration of the public domain were advocated and many different schemes tried. Of all the diverse methods of disposal, that which was based upon the homestead principle—free grants to settlers who should live upon and cultivate the lands for a certain time—was the last to secure the approval of Congress. Today it is the generally accepted principle of our land legislation, although the rapid decrease in the arable public domain has much lessened its application. It is this feature of our policy which has secured the almost universal approval of impartial students of this part of American history, the only wonder expressed being that such a policy was not sooner adopted. But this wonder vanishes when we find how closely the public domain has been connected with general political questions and in how many ways the homestead policy was in opposition to the political views of different sections of the country. It is my intention to trace the growth of the sentiment favoring the donation of lands on condition of actual settlement, and to show how and why this plan became involved with other seemingly distinct issues of national policy.

At first the public lands were regarded as the basis of a very large revenue, and the plans for their administration were formed with the intention of making that revenue as great as possible. It was perhaps only natural that such should have been the thought at the time when the new government was inaugurated. The country was deeply in debt, the levying of taxes by the national government was not looked at with favor by the states and the public domain seemed to furnish an easy means whereby the debt could be paid and at the same time heavy taxation avoided. And, while it was felt that the sale of the lands would be advantageous because of the money that it would bring, yet the rapid settlement of the western country was considered neither probable nor desirable. A slow and compact settlement was advocated as best both for the old states

and the new territories.[1] So the holding of the public lands for a comparatively high price would serve both the financial and the industrial interests of the country, and no change in this policy was likely to come before the growth of the West had forced upon the East the necessity for such a change.

This growth came much more rapidly than anyone had expected. By 1820 the states which had been carved out of the public domain were seven in number (including Missouri) and had a population of 1,224,384, while Kentucky and Tennessee, with 986,906 inhabitants, were likely to add their weight to the interests of the land states. In most things pertaining to the disposal of the public domain the ideas of these new states were radically different from those of the states which had no public land within their boundaries. The new states did not regard with favor the existence in their limits of large tracts of unoccupied land, the policy of whose owner was to make as much money as possible from it, regardless of the rapidity of settlement. This land was only partially subject to their jurisdiction; over it they could exercise neither the right of taxation nor eminent domain. Any policy which would tend to rapid settlement would have been welcomed by the new states, as the lands would then be both occupied and under the jurisdiction of their laws. Two policies which would have tended towards that result were open to the government: the lowering of the price of the lands with an ultimate gratuitous distribution, or the cession of the lands to the states in which they were situated—the primary desire being to get the lands out of the hands of the government as soon as possible.

The first of these policies contained in an imperfect form the homestead principle, although it was to be applied only to lands which had been long in the market and could presumably be disposed of in no other way. The policy of cession to the states would have allowed the lands to be disposed of at prices calculated to induce rapid immigration and would probably have led, through the almost inevitable competition, to state homestead laws. Of these plans the states preferred that of cession, as likely to serve their immediate interests better; but either was out of the question as long as they relied upon their own unaided efforts. They must appeal to the old states, and for this favor it was to the South rather than to the North that they turned.

For the South had always shown evidences of a better feeling for and a more intimate connection with the West. At the time

[1] See letters of Washington to Duane, September 7, 1783, *Writings* (Ford), X. 303; and to Williamson, March 15, 1785, *ibid.*, 446–447.

when the Confederation was considering plans for the administration of the lands acquired by the state cessions, this division of feeling regarding the West began to appear, the North wishing to retard emigration thither, while the South was inclined to favor it.[1] Such a feeling cannot be said to have been strong, but it continued for nearly fifty years, and during the period from the adoption of the Constitution down to the election of Andrew Jackson it was the South which understood and sympathized with the growing West. The exhibitions of hostility which the West was prone to cite were fancied rather than real, but there can be no doubt that the West was right when it felt that it must turn to the South for aid in its pet enterprises and that the North did not look with favor on its rapid growth.

The causes which led to this connection between the South and West were physiographic. The easiest route across the Appalachian system was from Virginia, through the Great Valley and into Tennessee, or, turning to the northward, down the Kanawha to the Ohio. It was because of this greater ease of communication that the settlers in the West were predominantly Southern until after the war of 1812.[2] And after the emigrants had reached the new country the natural line of traffic from the West to the sea was down the Mississippi and thus through Southern territory. It was not until the advent of the great railroad systems extending from the valley of the Mississippi to the Atlantic coast, after 1850, that this north-and-south route of commerce was changed for an east-and-west one. Nor was it to the economic advantage of the North, devoted as it was to manufacturing, to encourage the emigration which at last began. But to the agricultural South, on the other hand, the spreading and dispersion of population were especially welcome.

The movement for gratuitous distribution of the public lands did not begin until after 1820. Up to that year the minimum price had been $2 an acre, with liberal terms of credit, and this figure was found to be low enough, especially as the money was fre-

[1] *Life of Manasseh Cutler*, I. 135–136. The original plan of the Ordinance of 1785 for the disposal of each township in its entirety before the next could be offered for sale was not embodied in the final form of that document. It has frequently been stated that this plan was strongly favored at the North, and the charges of New England hostility to the West were partly based on such an assumption, but there is nothing in the action of Congress to point to such a conclusion. This clause was struck out on motion of a Southern delegate (McHenry, of Maryland), but there was only one Northern vote (from Rhode Island) in favor of its retention. A later motion to re-insert the provision received one vote from Massachusetts, two from Connecticut, one from New York and one from South Carolina. *Journals of Congress*, IV. 513–515, 519.

[2] See Roosevelt, *Winning of the West*, IV. 220–221.

quently not paid at all, to insure a fairly rapid settlement of the West. In 1820 the credit system was abolished and the price reduced to $1.25 an acre. This reduction was a step in the right direction, according to the West, but it did not go far enough. If the settlers were to pay cash for their lands that price would, it was maintained, prevent them from coming to the West in any considerable numbers, and the lands would remain in the hands of the government.

The cause of the West in the disposal of the lands was championed by one who came as the first senator from one of the states of the public domain, and who proved a ready advocate for a subject on which he had strong convictions. From 1824 on, Benton was urging upon Congress the reduction and graduation of the price of the lands, and had even gone so far as to propose the donation of them to actual settlers. While he met with but slight success at first he continued his efforts in the belief that public opinion was being educated upon the question.[1] His plan, as presented in a bill introduced in 1826, was for successive annual reductions in the price of lands until twenty-five cents an acre should be reached, after which the remaining lands were to be given to actual settlers. He made no attempt to secure a vote on the bill at this time.[2]

In 1828 Benton came forward with a new bill in which were combined the various western schemes for the disposition of the public lands. The graduation principle was to be applied to lands until they had been in the market for eight years, after which the settler could buy a quarter-section for eight dollars, and the lands which failed to be taken up then were to be ceded to the states.[3] This, said Benton, would please everyone. It would accelerate the sale of the lands and thus the treasury would be benefited; the new states would sooner secure the jurisdiction over the lands, while the donations would aid the poorer classes in securing homes.[4] But in spite of Benton's plea the Senate, by a vote of 21 to 25, refused to order the bill engrossed. Something of the position of the North on emigration and land-distribution can be learned from the fact that the bill did not receive a vote from a state north of Delaware.[5]

The outlook for the homestead plan was not bright, for it was in the Senate, with its proportionally large Southern and Western representation, that the greatest support for such a plan would

[1] Benton, *Thirty Years' View*, I. 102–103.

[2] *Register of Debates*, II. pt. 1, 567, 719–724.

[3] *Ibid.*, IV. pt. 1, 497.

[4] *Ibid.*, 609, 624–626.

[5] *Senate Journal*, 20th Cong., first session, 323.

probably be found. But at just about this time the cause of the West was advancing rapidly. The election of Jackson in 1828, although no issue concerning the public lands was involved, brought to the head of the government a person who was in all things likely to favor western demands, and was indicative of the growing power of that section. Nor was the West slow to formulate and increase its demands for changes in the land system. At the close of the year Adams noted with deep concern the "graspings of the western states after all the public lands," as reported to him by Clay, who also strongly disapproved of the idea.[1] Almost at the same time Niles spoke of a "simultaneous movement in several of the western states" which had for its object the acquiring of the public lands by those states.[2]

In spite of the growing strength of the West, Benton was in 1830 not able to secure the assent of the Senate to his bill until it had been amended so that only a reduction to one dollar was provided for. Even in this amended form the North was against the bill and in the vote of 24 to 22 only one vote in its favor came from a state north of Virginia.[3] Benton was, however, satisfied with the concession, as the further reductions in his original bill would not have begun to operate at once and he was confident of securing supplemental legislation from the next Congress.[4] He was very optimistic regarding his plans and maintained that the doctrines of donation to actual settlers and cession to the states had made great progress by 1833.[5] Adams indicated his fears that the old policy regarding the public lands, to which he clung as a New Englander, would be abandoned.[6] But the House with its overwhelming Eastern majority, refused even to consider the bill.[7]

But it is not to the graduation bill but to an innocent-looking resolution offered by Foot, of Connecticut, that we must look for exhibition of the real sentiment on the public lands. This resolution, famous for the debate on the theory of sovereignty which it occasioned, inquired into the advisability of limiting for a time the further sales of the lands. Should the policy to which it pointed be adopted it would be a direct blow at the desires and hopes of the Western states and particularly at the plans advocated by Benton.

[1] Adams, *Memoirs*, VIII. 87–88 (December 31, 1828).

[2] *Niles's Register*, XXXV. 313 (January 10, 1829).

[3] *Senate Journal*, 21st Cong., first session, 292.

[4] *Register of Debates*, VI. pt. 1, 413.

[5] Benton, *Thirty Years' View*, I. 275.

[6] "In conversing with Mr. Rush upon the prospects of the country, we agreed that the Indians are already sacrificed; that the public lands will be given away;" etc. Adams, *Memoirs*, VIII. 229 (May 22, 1830).

[7] *Register of Debates*, VI. pt. 1, 1148.

That senator was not slow to answer the attack. He assumed at once the position that the North, and particularly New England, had originated this idea, and in more than one fiery speech he denounced the policy which that section had, he asserted, always pursued towards the West. It had constantly desired to limit and restrain the growth of the West; it had attempted to secure the adoption of a land-policy which would only allow of a gradual settlement of that part of the country; it had been willing to surrender the navigation of the Mississippi; it had neglected and even refused to afford the settlers adequate protection from the Indians, and was even now endeavoring to limit emigration that its manufactures might be further developed. And by whom had the West been rescued when the hostile North was thus attempting to crush out its very life? By the South was Benton's answer.[1] We have seen that there was some basis for Benton's assertions, though he was by no means warranted in going as far as he did. But the South was at this time willing to assume the role which Benton ascribed to it, and Hayne continued the discussion in much the same strain. From this time the debate forgot the public lands entirely and passed into the wide realm of the interpretation of the Constitution. The fact that a resolution in regard to the disposal of the public lands could cause such a constitutional discussion shows to what an extent the land question was involved with other national issues and emphasizes the sectional aspects of this question.

In 1830 many things seemed to be working towards the speedy enactment of some sort of homestead law. In addition to the increase of the power of the West the financial condition of the country favored the policy of free gifts of the public lands. Up to this time the opponents of this policy or of the cessions of lands to the states had been able to rest their case on the argument that the lands were an important source of revenue and that this revenue was needed to pay the public debt. But now the public debt was being rapidly paid off and other grounds must be found for this opposition.

In view of the extinction of the debt Jackson took a stand in favor of a policy which should bring about the rapid settlement of the lands. He advocated this in his message of December, 1832, although he did not favor in full the principle of the homestead bill, but advised the sale of the lands to settlers at only enough to cover the cost of administration.[2] Such a policy accorded not only with Jackson's ideas regarding the West but also with his position on

[1] *Register of Debates*, VI. Pt. 1, 24–27, 102.

[2] *Messages and Papers of the Presidents*, II. 601.

other matters of public policy, as, favoring an economical administration, he was strongly opposed to a surplus revenue which might be used to further internal improvements.[1] In this he was in harmony with the South and the Democratic party, while the now forming Whig party favored a surplus. The matter was, however, complicated by the fact that if the revenue from the public lands should be kept up it would allow the reduction of the tariff, a measure favored by the Democrats and opposed by the Whigs. But the enactment of the compromise tariff of 1833 removed this issue from politics for some years, so that it appeared that the public land question might be settled on its own merits.

Accordingly, if the West had remained firm in its demand for the public lands it seems likely that it would have secured them either by means of a homestead law or by cessions to the states. The strongest objection to these measures would have come from the New England states, while the support of Jackson and the South could probably have been secured. Adams was of the opinion that an active Western and Southern alliance existed and that the public lands were to be given to the states.[2]

But the West did not hold firm to the position which it had taken. The action of one of its leaders completely changed its policy and committed the Whig party to a definite line of action in opposition to cessions to the states and homestead grants. In 1832 the request of the Western states for the public lands had been referred to the committee on manufactures, of which Clay was chairman, and he had reported in favor of the distribution of the proceeds from the land-sales among all the states. Without considering in detail the efforts to secure such a distribution, it is evident that this would effectually prevent either a homestead law or the cession of the lands to the states.[3]

But even if the government would not reduce the price of the lands the Western states had devised a way by which they could be obtained cheaply. The large issues of notes of the state banks, which were accepted in payment for lands until the specie circular of July 11, 1836, enabled one to purchase lands with comparative ease. Then came the crisis of 1837, and for a time the desire for lands at any price was removed.

[1] *Ibid.*, 597–598.

[2] "That debate [on Foot's resolution] was one of the earliest results of that coalition between the South and the West to sacrifice the manufacturing and free-labor interests of the North and East to the slave-holding interests of the South, by the plunder of the western lands surrendered by the South to the Western States." Adams, *Memoirs*, IX. 235 (April 19, 1835).

[3] On the distribution of the proceeds of the public lands see Sato, *Land Question in the United States*, Johns Hopkins University Studies, IV. 411–417.

From the time of Clay's report on the distribution of the proceeds in 1832, nothing is heard of homestead grants until 1845. Yet there is through this period a constantly increasing tendency to consider the actual settler in administering the public lands. In 1837 a bill to prohibit the sale of lands to any but actual settlers passed the Senate by a vote of 27 to 23,[1] but was laid on the table in the House, 107 to 91.[2] In the next Congress the changing sentiment was manifested by the passage of a graduation bill by the Senate by the decisive vote of 27 to 16,[3] while in the House another such bill received a favorable report from the committee on public lands,[4] although it never came to a vote. At this time the land policies of Texas and Canada were contrasted with those of the United States.[5] Further efforts to reduce and graduate the price of the lands were made during the next Congresses, but these, like their predecessors, failed in the House. The question had quieted down for a time and the chief importance of these bills is the indication which the votes upon them give of a gradual change in sectional sentiment, by which the North came to favor and the South to oppose the encouragement of Western emigration. The greatest gain to the actual settlers came in 1841 by the passage of a permanent pre-emption law.[6]

During this period there was no fixed and definite land policy. The passage of Clay's distribution bill in 1841 may be taken as indicating a policy hostile to a reduction in the price of lands, as there would then be much less to be distributed.[7] The homestead policy was, however, applied in an isolated case by the "Florida Donation Act" of 1842.[8] This granted quarter-sections to actual settlers, such an inducement being considered necessary because of the danger from the Indians.[9]

The position which the parties took in 1844 on the land question shows that the homestead policy was not actively considered by either at this time. The Whigs favored and the Democrats opposed the distribution of the proceeds, but beyond this the platforms did not go. It was asserted at a later time that the result of the election was a verdict for the reduction and graduation of the

[1] *Senate Journal*, 24th Cong., second session, 233.

[2] *House Journal*, 24th Cong., second session, 561.

[3] *Senate Journal*, 25th Cong., second session, 356.

[4] *Globe*, 25th Cong., second session, 60–61.

[5] *Ibid.*, 294. Texas offered 640 acres to each head of a family and 120 acres to each single man. Gouge, *Fiscal History of Texas*, 93.

[6] See Sato, *Land Question*, 417–421.

[7] See *Globe*, 28th Cong., second session, 248, 249.

[8] *Statutes at Large*, V. 502.

[9] *Globe*, 27th Cong., second session, 623–624, 764–766.

price of the lands,[1] but there is nothing to show that anything more than the distribution was in issue in this campaign, and this was of very minor importance.[2] The question before the people was not how to dispose of the land which we already had but how to acquire more. Texas and Oregon, not distribution and homesteads, were the issues of the campaign.

But new territories having been acquired, the problem of their settlement at once arose. While the paramount question was whether the settlers could take their slaves with them, yet the plan of offering inducements for Western immigration began to push to the front, although it was not so much for the new territories as for the old ones that the latter question was agitated. The decade 1840–50, particularly its latter half, was a period of constantly increasing emigration from Europe to the United States. A great share of this new population went into the states and territories of the Northwest, which show an astonishing rate of increase during those ten years.[3] That a still greater increase might be secured, the movement for homesteads was taken up in earnest by the Western states.

Yet this new movement for free grants was not to come at first from the land states but from a state which had no public lands. In 1845 Thomasson, of Kentucky, had introduced a bill making donations of forty acres to actual settlers who were heads of families. He very frankly stated that one of his chief objects was to remove the public-land fund from the national treasury, as he did not wish a revenue from the lands sufficient to give an excuse for breaking down the protective system.[4] The next year two amendments having for their object the securing of homesteads for actual settlers were offered to graduation bills. One of these came from Darragh, of Pennsylvania, and provided for the donation of lands which had been in the market for ten years or more to actual settlers after a three years' occupation,[5] and the other from Johnson, of Tennessee, making grants of quarter-sections to destitute heads of families who should occupy them for four years.[6] Both of these plans were limited in their application, the first as regards the lands and the second as regards the settlers, but neither secured the assent of the House.

[1] By Bowlin, of Missouri, July 6, 1846. *Globe*, 29th Cong., first session, 1061–1062.

[2] Vinton, of Ohio, declared that the public lands had never been a party question. *Ibid.*, 1076.

[3] Wisconsin increased 886 per cent. during this decade; Iowa 199 per cent.; Michigan 87 per cent.; Illinois 79 per cent.

[4] *Globe*, 28th Cong., second session, 241.

[5] *Globe*, 29th Cong., first session, 1077.

[6] *Ibid.*

During the next Congress various bills were introduced looking toward the homestead principle, either attempting to prevent speculation in the public lands[1] or making grants to actual settlers;[2] but none of these received any consideration. But the issue of homesteads, if not considered in Congress, was presented in very definite form to the people by the new Free-Soil party in its Buffalo convention of 1848.[3] While this party did not represent any considerable number of voters, yet on this particular question it was in harmony with many members of the old parties, neither of which antagonized the position which the Free-Soilers had taken.

In 1850 an important step in land policy was taken in the enactment of the first railroad-land-grant law, which donated lands to Illinois, Mississippi and Alabama for a railroad from Chicago to Mobile. While the plan for this grant had originated in the West and was strongly supported there it also received some opposition from that section because it was felt that the possession of large tracts of lands by corporations and the increase (to $2.50 an acre) in the price of the remaining public lands within six miles of the proposed road would operate to the disadvantage of the settler. An unsuccessful effort was made to strike out this increase of price,[4] but no further opposition to railroad land-grants from the homestead standpoint was now developed.

At this time two propositions for homestead grants were made in the Senate. The one, by Walker of Wisconsin, was for a cession of the lands to the states, on condition that they be granted in limited quantities to actual settlers for the cost of administration.[5] The other, from Douglas, was for grants of 160 acres to actual settlers after a residence and cultivation of four years.[6] The committee on public lands reported against both bills. In general, they considered that the public lands should be administered for the benefit of the treasury and that that system of disposal which would bring the greatest financial return should be adopted. The public lands were pledged for the payment of the public debt and so could

[1] *Globe*, 30th Cong., first session, 916, 181, 583.

[2] *Ibid.*, 25, 605.

[3] "Resolved, That the free grant to actual settlers, in consideration of the expenses they incur in making settlements in the wilderness, which are usually fully equal to their actual cost, and of the public benefits resulting therefrom, of reasonable portions of the public lands, under suitable limitations, is a wise and just measure of public policy which will promote, in various ways, the interests of all the States of the Union." Stanwood, *History of the Presidency*, 241.

[4] See my *Congressional Grants of Land in Aid of Railways*, Bulletin of the University of Wisconsin, Economics, Political Science and History Series, II., no. 3, pp. 31–32.

[5] *Senate Journal*, 31st Cong., first session, 116.

[6] *Ibid.*, 36.

not in justice to the public debtors be given away. The plan would also be unjust to those who already held land in the new states, as so much free land placed upon the market would at once reduce land values. The committee further held that not only had the government no right thus to decrease the value of farm lands, but it was especially estopped because of the effect which such an action would have on the grants recently made for internal improvements of various kinds.[1] The antagonism between the homestead system and the beneficiaries under the internal improvement grants was thus sharply brought out.

During the next Congress the public land question was most prominent of all. It was between the advocates of homesteads and the railroad land-grants that the chief conflict occurred. Governor Farwell of Wisconsin, in his message of 1852, argued that the grants for railroads injured rather than benefited the Western states, because of the inclusion, in the grants, of the most valuable portions of the public lands and the consequent retarding of settlement.[2] On the other side it was stated that the only formidable opposition to the homestead bills came from the friends of land-grants,[3] and that, while the House was opposed to the land-grant bills, they might be passed by compromises with those who were more opposed to grants to settlers.[4] On comparing the vote on the homestead bill with that on a typical land-grant bill it will be found that the members divide into three classes of almost equal strength, one opposed to the one and in favor of the other measure, a second opposed to both plans and a third favoring both.[5]

The tariff question again appeared in connection with the homestead grants. In 1850 and 1852 charges were made in the debates over the bills that their supporters wished to accomplish what Thomasson had in 1845 frankly stated to be his object, the creation of a need for high tariff duties.[6] It is quite probable that such influences were at work in the minds of some of the Whigs, but that party still retained its love for the distribution of the proceeds,[7] which would have accomplished the same object as the homestead law as far as the effect on the treasury was concerned.

The discussions over the homestead question in the Congressional session of 1851–52 exhibited also some manifestations of

[1] *Senate Reports*, 31st Cong., first session, No. 167.

[2] *Wisconsin Assembly Journal*, fifth session, 30–31.

[3] *Globe*, 32nd Cong., first session, App., 574.

[4] Pike in the *Semi-Weekly Tribune*, March 19, 1852.

[5] See my *Grants in Aid of Railways*, 46–49.

[6] *Globe*, 31st Cong., first session, 264; 32nd Cong., first session, App., 238.

[7] See Wentworth, *Congressional Reminiscences*, Fergus Historical Series, No. 24, p. 40.

that spirit which was to break out two years later in the form of Know-Nothingism. The bill as introduced in the House would have granted lands to all citizens of the United States who should comply with its provisions. To this an amendment was offered which restricted its benefits to native-born citizens or to those who had declared their intention of becoming citizens prior to the first of January, 1852. This amendment was offered by Johnson and was supported by a number of other members of the House because they did not wish to encourage immigration by the bill;[1] but Johnson finally withdrew it.[2]

During the next Congress the restriction as to citizens was a part of the proposed bill, and the efforts to remove it met with violent opposition. Washburn of Illinois had proposed to allow anyone who had filed a declaration of intention to become a citizen to enter land under the bill, as this would encourage immigration; but this proposal was disagreed to without a division.[3] Wade then wished to remove all restrictions as to citizenship, but in this he was strongly opposed by several members, including Adams of Mississippi, who referred to the anti-slavery position which the foreigners were taking, and Thompson of Kentucky, who made a severe attack on the immigrants, although he declared that he was not a "Native American" in the political sense of the term.[4] Wade saw that his amendment would endanger and probably defeat the bill, and he withdrew it.[5] But even then the bill was objectionable to those members of Congress who were tinctured with "Americanism," for another section contained the provision that any person who had, at the time of the passage of the act, declared his intention of becoming a citizen should be entitled to the benefit of its provisions. This section was attacked. The assertion was made that the passage of the bill in that form would contribute to the growth of the Native American party, particularly in the South.[6] The *National Intelligencer*[7] characterized the bill as one which would "draw to our shores the poverty and crime of every clime and kingdom" of Europe. But in spite of these dire predictions the motion to strike out this section was defeated, 19 to 29.[8]

As if the cause of homesteads were not having troubles enough at this time, the question of the extension of slavery, now agitating

[1] *Globe*, 32nd Cong., first session, 1275–1284.
[2] *Ibid.*, 1315.
[3] *Globe*, 33d Cong., first session, 529.
[4] *Ibid.*, 944–948.
[5] *Ibid.*, 1661.
[6] *Ibid.*, 1705.
[7] July 20, 1854.
[8] *Senate Journal*, 33d Cong., first session, 516.

Congress in the form of the Kansas-Nebraska bill, came up to vex it. Some fears were expressed that free negroes might take advantage of the homestead act, but on this the opinion was quite generally expressed that the limitation as to citizens was sufficient, as negroes could not possibly be included under that designation. But to make the matter perfectly sure the word white was inserted in the bill; not, however, so that it would read "white citizens," a redundant expression in the ears of the Southerners, but "white persons."[1] But that the restriction to whites did not reconcile the slave states is shown clearly in the vote in the House, where the members from the free states were 74 to 31 for the bill and the members from the slave states 41 to 33 against it, and of these 33 votes 21 came from the border states of Tennessee, Kentucky and Missouri.[2]

One of the opponents of the bill from the slave states saw clearly why it was for the interest of his section to take the position which it took. Johnson, of Arkansas, stated in the Senate that he had formerly favored the bill, but that he could not support it because "just at this time it is tinctured, to a degree, from its inevitable effects, and under the peculiar circumstances, so strongly with abolitionism." The style is involved but the meaning is clear, and he went on to explain that the lands north of the Missouri Compromise line where only northern men could go were being opened up for settlement, while those south of the line were still closed, and so the bill was being pushed at this time in order that the territorial question might be settled in favor of the North.[3] But this objection was being removed at this very time, for the Kansas-Nebraska bill had passed the Senate and was under discussion in the House with every prospect of its early passage. What Johnson did not say but what he must have realized was, that it was the Northern farmer, rather than the Southern slaveholder, who would be induced to go into the territories by such a law.

During the debates on this bill it was declared to be the true Democratic doctrine, that the lands should be sold and the proceeds placed in the treasury, the revenue thus derived permitting a lower tariff.[4] The Democrats, however, favored the bill, voting for it, 72 to 52, and the Whigs took a similiar position by a vote of 35 to 19. The only Free-Soiler in the House voted against it.[5]

The House had, for some years, annually passed the homestead bill, and the Senate had as regularly defeated it. But in 1854, the

[1] *Globe*, 33d Cong., first session, 503–504.
[2] *House Journal*, 33d Cong., first session, 458.
[3] *Globe*, 33d Cong., first session, 1125.
[4] *Ibid.*, 459.
[5] *House Journal*, 33d Cong., first session, 458.

Senate, instead of directly voting the bill down, set it aside and passed a substitute which provided that any free white person, head of a family, should be entitled to enter on a quarter-section of public land and after five years' occupation and cultivation purchase it for twenty-five cents an acre. This substitute contained a number of other provisions, for the right of pre-emption by the states, for a general grant of land to the states for the building of railroads, etc.[1] It seems to have been supported by both the friends and the opponents of the regular homestead bill.[2] This bill went back to the House, but was not acted upon there.

It was not until about four years later that the question of homesteads again came before Congress. Early in the session which began in the fall of 1857 a bill for free grants was introduced into the Senate but was postponed after a short discussion to January, 1859. There was some factious opposition expressed in a proposition to give to any head of a family a land-warrant for 160 acres, that he might enjoy the benefits of the act without leaving his home and going to the West.[3] The doctrine of *laissez faire* was brought up as opposed to the principle of the bill; it was declared that a person's self-interest should be sufficient to cause the settlement of the new lands as rapidly as was good for the country.[4] Johnson attempted to remove the feeling which he said existed in the South that the homestead bill was a sort of Emigrant Aid Society, by showing that the bill had been before Congress since 1846, before there was, as he expressed it, any question of slavery.[5]

At the short session of this Congress the House passed a homestead bill by a vote of 120 to 76. The sectional and party divisions are particularly significant at this time, as they show clearly the intimate connection between slavery and the question of territorial expansion as expressed in the proposed bill. That the bill was a northern Emigrant Aid measure can be doubted by no one who remembers the slowness with which the Southerners could be induced to move into the territories, and the corresponding willingness of the Northerners to migrate even without homestead inducements. Both sections were alive to this aspect of the bill; only 7 votes from the free states were cast against it and only 5 votes from the slave states for it. The Democrats were 38 to 60 against it and the Republicans 82 to 1 in its favor. The fear that the bill would encourage immigration was shown in the votes of the 15 Americans

[1] *Globe*, 33d Cong., first session, App., 1122.

[2] See my *Grants in Aid of Railways*, 50–51.

[3] *Globe*, 35th Cong., first session, 2240.

[4] *Ibid.*

[5] *Ibid.*, 2265.

against the measure.[1] The New York *Tribune* enumerated, as the forces which were opposed to the bill, slavery, railroad grants and bounty land-warrants, the last because homesteads would decrease the value of the warrants.[2]

The bill which the Senate had postponed from the previous session had not been considered. On February 17, 1859, the House bill came up. A motion to postpone it stood 28 to 28; the Vice-President, Breckenridge, voted in the affirmative and so the matter was put off for the moment. On February 25, the Senate had under consideration the bill to appropriate $30,000,000 for the purchase of Cuba. The time was particularly inopportune for the forcing of a discussion on a measure so opposed to the slavery interests as the homestead bill, but Doolittle of Wisconsin moved to lay the Cuba bill aside and take up the other. Johnson, Douglas and Rice, all supporters of the homestead bill, requested Doolittle to withdraw his motion, as it only served to antagonize the friends of the Cuba bill. Doolittle refused, and the discussion between the slavery and anti-slavery elements in the Senate grew warm. Toombs asserted that the opponents of the Cuba bill were attempting to dodge the issue by killing the bill under the guise of a postponement. Wade denied the charge and said that the anti-slavery men were willing to meet the issue, which he stated as: "Shall we give niggers to the niggerless or lands to the landless?" It was evident that the two measures were in flat opposition, not only as regards precedence on that evening but in their ultimate principles, which Seward more decorously stated as follows: "The homestead bill is a question of homes, of homes for the landless freemen of the United States. The Cuba bill is a question of slaves for the slaveholders of the United States." The motion to take up the homestead bill failed by a vote of 19 to 29, only one person from a slave state, Johnson of Tennessee, voting in favor of it. By almost the same vote (18 to 30) the Senate refused to lay the Cuba bill on the table, the difference being due to the change in Johnson's vote.[3]

The Southern opposition was not, however, all due to the effect which a homestead act would have on the slavery question. Under

[1] *House Journal*, 35th Cong., second session, 309. I use the classification of the *Tribune Almanac* for 1859. "The slaveholders voted against it because they despise free labor, and the doughfaces because they love to serve the slaveholders. The South Americans voted against the bill because it allowed aliens, who had only declared their intention of becoming citizens, to participate in its benefits." New York *Semi-Weekly Tribune*, February 8, 1859.

[2] *Ibid.*

[3] See *Globe*, 35th Cong., second session, 1351–1354, 1363. By the time the vote was taken on the Cuba bill two senators who had voted on the homestead bill were paired and there was a vote from Maryland for and one from Oregon against the bill.

a strict construction of the Constitution it was held that Congress could not give away the public lands or use them to further any objects which could not be aided by a direct appropriation. The provision of the Constitution that "The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belong to the United States,"[1] was considered as limited by the enumerated powers granted to Congress so that nothing could be done with the lands which was not specified in those enumerated powers. This had been one of the grounds taken by Pierce in his veto of the act granting lands for support of hospitals for the insane, passed by Congress in 1854.[2] The same objection was made to grants in aid of colleges[3] and was only obviated in the grants for railroads by the alternate-section principle, whereby the lands remaining to the government within the limits of the grant were doubled in price so that there was in theory no loss to the government.[4] Some of the homestead bills, but not all, also contained this alternate-section principle, in the form of a restriction of the entries to the odd-numbered sections, but the remaining sections were of course not doubled in price. The bill which passed Congress in 1860 and which was vetoed by Buchanan bore this form.[5] Little attention seems to have been paid to this provision and it did not overcome, as in the case of the railroad grants, the objections of the strict constructionists.

At the next Congress the homestead bill passed the House after but little discussion. Sectionally and politically the vote was divided almost as before. Of the 115 voting for the bill 90 were Republicans and 25 Democrats, and the 66 opposed to it were 49 Democrats and 17 Americans. Pennsylvania was the only free state from which a vote was cast against the bill and Missouri the

[1] Art. IV., Sec. III.

[2] "I respectfully submit that in a constitutional point of view it is wholly immaterial whether the appropriation be in money or in land.

"The public domain is the common property of the Union just as much as the surplus proceeds of that and of duties on imports remaining unexpended in the Treasury. As such it has been pledged, is now pledged, and may need to be so pledged again for public indebtedness.

"As property it is distinguished from actual money chiefly in this respect, that its profitable management sometimes requires that portions of it be appropriated to local objects in the States wherein it may happen to lie, as would be done by any prudent proprietor to enhance the sale value of his private domain. All such grants are in fact a disposal of it for value received, but they afford no precedent or constitutional reason for giving away the public lands." *Messages and Papers of the Presidents*, V. 253–254.

[3] See Knight, *Land Grants for Education in the Northwest Territory*, Papers of the American Historical Association, I. 97.

[4] See my *Grants in Aid of Railways*, 86.

[5] Donaldson, *Public Domain*, 340.

only slave state with a vote for it.[1] The provision allowing the entry of 80 acres of land held at $2.50 an acre partly opened up the reserved lands in the railroad grants, but 160 acres of the $1.25 lands could be taken up by the homesteader. Not until 1879 could the latter amount of the reserved lands be entered under the proposed act.

It was evident that the bill could not pass the Senate, and therefore Johnson proposed a substitute which gave to actual settlers the right of pre-emption at twenty-five cents an acre. A test vote on the homestead principle itself was furnished by the motion of Wade to substitute the original House bill, but this was lost 26 to 31, with votes from three free states, Pennsylvania, California and Oregon, against it.[2] The bill was then passed with only eight votes against it, seven of which were from the slave states.[3] The House at first refused to recede from its original bill but finally yielded to the Senate, considering that it was doing the best thing possible under the circumstances.[4] But even this concession to the friends of homesteads was not destined to become law, for Buchanan returned it to the Senate without his approval and the attempt to pass it over the veto failed, 27 to 18.[5]

Buchanan considered that the price charged would be merely nominal, so that the measure would be open to the same objections as a direct grant. That such a grant was unconstitutional Buchanan had already held in his veto of the agricultural college land-grant bill.[6] Congress was a trustee of the public lands, and when it was authorized by the Constitution to "dispose of" them, such a power was limited by the purposes for which the government was created, by the enumerated powers of Congress. He also considered the bill unjust to those who had already settled in the West and who had paid a much higher price for the lands. The holders of bounty land-warrants could also object, for the value of those instruments would be reduced by the bill. It was further unjust in that it confined its benefits to one class of the people; in that it would offer inducements for emigration from the old states, and because it would encourage immigration from abroad. Buchanan considered that the old system of holding the lands for revenue should be retained, and estimated that from them an annual income of $10,000,000 could be obtained.[7]

[1] *House Journal*, 36th Cong., first session, 502.
[2] *Senate Journal*, 36th Cong., first session, 447.
[3] *Ibid.*, 458.
[4] *Globe*, 36th Cong., first session, 3179.
[5] *Ibid.*, 3272.
[6] *Messages and Papers of the Presidents*, V. 543.
[7] *Ibid.*, 608–614.

This argument of Buchanan's against the homestead bill is a decidedly weak one. In the constitutional part of it he followed Pierce in his veto of the grant for the insane, but he did not state that argument with the same force as his predecessor. And that argument, in its best form, was valid only on a very strict interpretation of the Constitution, an interpretation which every American statesman had exceeded time and again. Much of the remainder of his argument is based on the assumption that the labor of five years which the settler must expend on the land before he could obtain a clear title to it was no return to the government for the lands donated, whereas it is probably no exaggeration to say that the improvement and settlement of the land was of greater value to the country than the price of the land would have been; for in the case of outright sales there was no guarantee that the land would be settled or cultivated. As for the immigration problem, the foreigner who was attracted by the prospect of five years' labor on the frontier has proved the most desirable settler that the country has obtained from abroad.

The next Congress showed very little opposition to the homestead bill and it at last became a law, May 20, 1862. Its passage attracted little attention in the war time, but its wisdom has never been seriously questioned and the only amendments have been intended to increase its efficiency and liberality.

During the period of more than forty years throughout which the homestead bills, in one form or another, were before Congress the most manifold opposition was manifested to them. At first they had to contend with the feeling that to give away any of the public lands would be to waste a large source of revenue at a time when the country needed all the money it could obtain to pay its debts. When the need of the revenue became less pressing it was proposed to keep up the fund from the lands and then distribute it among the states. The actual settler was being more favored in the land legislation, but the efforts, feeble up to 1848, to obtain the lands for him without cost met with no success. After 1848 the movement increased in force but it found stronger forces in opposition to it. The advocate of state-sovereignty and strict construction saw in the homestead act an increase in the power of the general government and therefore gave his aid to its defeat. To the Know-Nothing it was an inducement to foreigners to come to our country and bring with them subservience to the Pope. And, strongest opponent of all, the slaveholder saw that free homesteads meant the rapid settlement of the lands by the people of the North and the passing of the territories from his hands forever. He found himself defeated

in the struggle for Kansas even without the homestead law to aid the Northern emigrant; with it, he saw, the North would be invincible. With all this powerful opposition is it any wonder that bills which benefited directly only a class of citizens having little political influence should have waited so long to become law?

JOHN BELL SANBORN.